Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From April 1, 1966

Through June 30, 1966

VOLUME 123

RICHMOND M. FLOWERS, Attorney General

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1966 through June 30, 1966, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

RICHMOND M. FLOWERS
Attorney General

RICHMOND M. FLOWERS
Attorney General

HARVEY ELROD
Deputy Attorney General

George W. Linn
Executive Assistant

Randolph G. Lurie
Chief Assistant Attorney General

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Edward H. Reynolds

OPINIONS

April 4, 1966

Mr. Roy C. Snead, Sheriff
Calhoun County Courthouse
Anniston, Alabama

Courts — Jurisdiction

Juvenile and Domestic Relations Court of Calhoun County does not have jurisdiction under Act No. 99, Acts of Alabama, Second Special Session 1965.

Opinion by Assistant Attorney General Carol F. Miller

Dear Sheriff Snead:

Your request for an opinion dated March 23, 1966, which your attorney, Mr. John R. Phillips of Anniston, Alabama, submitted to this office on your behalf is as follows:

"As attorney for the Sheriff of Calhoun County, Alabama, Roy C. Snead, I have been requested to get your official opinion on a legal problem which has arisen in the Sheriff's Office.

"Recently the Sheriff's Office received a FI FA to levy upon property of a parent from the Juvenile and Domestic Relations Court of Calhoun County, Alabama, in accordance with Act 99 of the Second Special Session 1965, authorizing recovery of damages from the parents of a minor child for willful or malicious destruction of property.

"Please advise Sheriff Snead if the Juvenile and Domestic Relations Court has the authority and power to render a judgment against a parent under Act #99 as set out above.

"I would appreciate your prompt attention to this matter.

"With best personal regards, I am."

The jurisdiction of the Juvenile and Domestic Relations Court of Calhoun County, Alabama is provided in Act No. 251, Acts of Alabama 1953, Vol. 1, pp. 316 et seq., and does not include civil jurisdiction in damage suits.

Act No. 99, Acts of Alabama, Second Special Session 1965, p. 132, authorizes the recovery of damages not exceeding $500.00 from parents of minors under 18 years of age for destruction of property by such minors. The Act does not confer jurisdiction on the Juvenile and Domestic Relations Court of Calhoun County, and in the absence of specific statutory or constitutional authority such jurisdiction does not exist. Courts of limited jurisdiction have only that jurisdiction which is expressly given to them by statute. **Longshore v. City of Homewood** (1965), 277 Ala. 444, 171 So. 2d 453.

The Alabama courts have held consistently that a sheriff is not required to execute the process of a court if the process is void on its face. For example, in **Ferguson v. Starkey** (1915), 192 Ala. 471, 68 So. 348, the Alabama Supreme Court states: "Sheriffs, when executing writs regular and valid on their face, and issued in the ordinary court of justice from a court or person having jurisdiction in the premises, are not required to look beyond the writs, or to institute an inquiry as to the regularity or validity of the proceedings prior to their issue. **Brown v. State,** 109 Ala. 70, 20 So. 103," and in **Albright v. Mills,** 86 Ala. 324, 5 So. 591: ". . . The law will protect a sheriff . . . in the execution of process, regular on its face, provided it does not disclose a want of jurisdiction to issue it on the part of the court from which it emanates. If, however, an inspection of the process discloses the fact that the process is void for the want of jurisdiction of the subject matter or parties, the process can afford the officer no protection, and he proceeds under it at his peril." Numerous other authorities on this point may be found collected in the Alabama Digest, Sheriffs and Constables. From this it follows that if the process you received discloses on its face the want of jurisdiction in the court issuing the process, you are not authorized to execute the same.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

April 4, 1966

Honorable G. H. Stacy
Judge of Probate
Bibb County Courthouse
Centreville, Alabama

Taxation — Ad Valorem Taxes — Exemption — Bibb County Use Tax

1. Act #17 Regular Session, 1957 Legislature levying a county use tax, applicable to Bibb County, is an excise levy.

2. The plant exemption from taxation under Section 3, as amended, Title 51, Code, Recompiled 1958, refers only to ad valorem taxes.

Opinion by Assistant Attorney General Payne

Dear Sir:

Your request for an official opinion of this office bearing date of March 17, 1966, reads as follows:

"I am writing to ask you to give me an official opinion on this matter. Attached hereto are three things to be considered;

1. The Resolution issued by the Bibb County Commissioners Court on June 26, 1964.

2. A letter from the Used Tax Division to Santana Sportswear Company dated March 2, 1966.

3. A letter from Mr. Louis B. Susman, attorney for Santana Sportswear Company.

"Act #17 of the 1957 Regular Session, page 43 deals with a 1% sales tax for Bibb County. The Bibb County Hospital Board was established and duly incorporated under the Alabama law. This Board was given authority to use money collected under this act for building and maintenance of hospitals and clinics. The Revenue Department of Alabama collects this money for the Hospital Board. The Commissioners Court does not have any responsibility in collecting or dispersing the money derived from the sales and used tax.

"After giving due consideration to the above matters please advise me whether there is anything that the Commissioners Court is authorized to do that would relieve the Santana Sportswear Company of this used tax charged against it. The Commissioners Court is anxious to fully cooperate in this matter."

In sum, with reference to the above you wish an opinion of this office as to whether the Commissioners Court of Bibb County can accord any relief to Santana Sportswear Company, a corporation, with respect to the proposed assessment against it for use tax levied by Act #17, Page 43, Regular Session, 1957 Legislature.

The above Act is a legislative enactment, applying to Bibb County, levying a sales and use tax upon the persons and corporations therein mentioned. The Santana corporation, of course, would be subject to the Act according to its provisions. The Act adopts all of the terms and phrases as defined in the state sales and use tax legislation under Articles X and XI of Chapter 20, Title 51, Code of Alabama 1940.

The Court of County Commissioners of Bibb County by resolution passed on the 26th day of June, 1964, exempted Santana:

". . . from all taxes assessed for county purposes, ...**upon** any and all property owned by said Santana Sportswear Company . . . located in Bibb County, Alabama, or elsewhere **upon** which Bibb County, Alabama, would be entitled to any tax, . . ."

The resolution also refers to exemption of the works, machinery, and equipment and other personal property owned by the corporation.

In view of the attempt by the State Department of Revenue to collect a proposed use tax assessment against the company upon its

machinery and equipment (which the Revenue Department informs me is the basis of the tax) in the light of the resolution referred to above, brings forth from Santana the cry of "foul". It is apparent, from the correspondence submitted, that this dissatisfaction stems from failure on the part of counsel representing Santana, to take into account the **nature** of the tax imposed by Act #17, supra. The use tax levied under the aforementioned Act is an excise tax for the privilege of using, storing, or consuming tangible personal property in Bibb County. The county use tax is of the same nature as that levied under the state use tax enactment, which has been held throughout its adoption as an excise levy, and not a property or ad valorem tax. **National Linen Service Corporation v. State Tax Commission,** 237 Ala. 360, 186 So. 478.

Section 3, as amended, Title 51, Code, Recompiled 1958 (Pocket Part), under which the above resolution of June 26, 1964, was passed, is applicable only to **ad valorem taxes.** There have been many opinions of this office treating various phases and aspects of the plant exemption legislation. Not any of the opinions, according to my research, indicate that the plant exemption law refers to other than that of ad valorem taxation. The bulk of the opinions are addressed to either tax assessors or tax collectors, or both. Quarterly Report of the Attorney General, Vol. 37, Page 10. These state officials collect and assess ad valorem taxes. The opinions also go to great pains, at times, in pointing out the ad valorem tax year, the law day, etc., and as to the attachment of the ad valorem lien. Quarterly Report of the Attorney General, Vol. 38, Page 7; Quarterly Report of the Attorney General, Vol. 64, Page 37; Quarterly Report of the Attorney General, Vol. 55, Page 148. In the opinion last cited it was observed:

> "Title 51, Section 3, supra, lists specific classes of factories and plants which are qualified for certain exemptions from the payment of **ad valorem taxes."**

To the same effect see Quarterly Report of the Attorney General, Vol. 56, Page 83; Vol. 92, Page 52; Vol. 94, Page 66; Vol. 113, Pages 91 & 105.

The decisions of the Alabama Supreme Court leave no other reasonable conclusion but that the tax under the plant exemption statute refers to one, ad valorem in nature. **Pullman Car & Mfg. Corporation of Alabama v. Hamilton, et al,** 236 Ala. 209, 181 So. 244; **Pullman Car & Mfg. Corporation of Alabama v. Hamilton,** 229 Ala. 184, 155 So. 616. The statute, Section 3, supra, expressly stating that the Court of County Commissioners may remit the taxes assessed **"on such plants",** evidences a direct tax on property.

In passing, let me note that the resolution attempts to exempt the property of one Michael J. Novoson, individually. There is no authority under the plant exemption statute for exempting an individual with respect to ad valorem taxes on his personal or private property used by him in his individual or private capacity.

The levy of the use tax as provided for under Act #17, supra, applies to Santana, and assuming that the assessment is correct, the corporation owes the tax. The County Commissioners of Bibb County are not violating the resolution referred to in any manner whatsoever. The reference to the proposed assessment of use tax under the aforementioned Act against the corporation is wholly foreign to any matter or commitment under the resolution of June 26, 1964.

Under the law as discussed above, there is no authority whereby the Commissioners Court can relieve the Santana company from its liability to pay the tax in question.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

April 7, 1966

Honorable Walter C. Head, Jr., Director
Department of Veterans Affairs
P. O. Box 1509
Montgomery, Alabama

Veterans — Schools — Military and Naval Affairs — United States

Veterans receiving Federal benefits under the Veterans Readjustment Benefits Act of 1966, PL 89-358, who are also children of "veterans" entitled to State benefits provided for in Title 60, Chapter 5, Section 82 (1-18), Code of Alabama 1940, Recompiled 1958, may also receive said State benefits. The exclusion provided for in Title 60, Section 82(14), Code of Alabama 1940, Recompiled 1958, of dual benefits does not apply to the children of a "veteran" as the term is used in said Chapter 5, supra.

Opinion by Assistant Attorney General Screws

Dear Sir:

Your request for an official opinion bearing date of March 28, 1966, is as follows:

"Your official opinion is respectfully requested in regard to the application of Section 7 of Act No. 617, Acts of Alabama 1957, page 883.

"This section states 'No veteran, nor his wife may obtain any benefits under this act if the Federal Government, through its Public Laws No. 634, 190, or 894 or any similar legislation hereafter enacted,

provides for payment to any person, institution, or organization on behalf of such veteran, or his wife, for the purpose of providing opportunity for rehabilitation or educational training, provided such benefits are of equal or greater value than those provided by this Act; Provided, however, that the benefits hereunder are provided in addition to any other State or Federal benefits to which the widow or children of a deceased veteran may be entitled.'

"We now have in state-supported institutions of higher learning and state trade schools a great many children of disabled and deceased veterans of World War I, World War II and Korea who are qualified under the Alabama G. I. and Dependents Educational Benefit Act, Act No. 47, Acts of Alabama 1951; as amended by Act No. 617, Acts of Alabama 1957; and Act No. 767, Acts of Alabama 1965.

"The Veterans Readjustment Benefits Act of 1966, PL 89-358, which was signed by the President on March 3, 1966, provides a permanent program of educational benefits for all veterans who have at least 181 days of active service since January 31, 1955. With the passage of PL 89-358 some of these children became eligible for benefits under the federal act as a result of their own service in the armed forces. However, their current attendance under the Alabama G. I. and Dependents Educational Benefit Act is based solely upon their father's service.

"To illustrate: A child is now attending Auburn University under the state act on account of his father's service in World War II. However, the child was in military service from March 26, 1962, to December 23, 1965, thereby creating eligibility under the Federal Act, with such benefits to begin June 1, 1966.

"The question concerning for which we request your official opinion is as follows: Does Section 7, Act 617, supra, exclude these children of veterans, who are now veterans themselves and are eligible for Federal benefits under the new PL 89-358 based on their own service.

"In the case illustrated above, if your answer is that such children are not entitled to further benefits after June 1, 1966, it will be necessary for us to terminate eligibility already granted to a number of them presently attending Alabama schools. However, it is worthy of note to mention that in Sections 1 and 3 of Act No. 617, supra, it is stated that eligibility for training under the act will be suspended when delays are caused by military service.

"The federal bill is effective June 1, 1966, and we, therefore, need an immediate answer so that if eligibility is to be terminated we can give as much notice as possible to both the school and children."

I am of the opinion that your inquiry should be answered in the negative.

Section 7 of Act No. 617, Acts of Alabama 1957, page 883, quoted in your letter, appears as Title 60, Section 82(14), Code of Alabama 1940,

Recompiled 1958. The term "veteran" as used in said section, in my judgment, applies only to the veteran himself as the same is used throughout Title 60, Chapter 5, Section 82 (1-18), Code of Alabama 1940, Recompiled 1958, and as subsequently amended. It is applicable to those veterans who would be entitled to the benefits under said Chapter, and in particularly Section 82(14), as amended by Act No. 767, Acts of Alabama 1965, page 1378. — See Quarterly Report of Attorney General, Volume 121, page 34. It may be noted that the exclusion in the first part of said section specifically covers only the veteran and his wife, and by the last part his widow and children are entitled to any other State and Federal benefits.

The term "veteran" in question does not, in my opinion, cover said veteran's children who are entitled to receive benefits by virtue of being the children of such veteran, even though said children may be veterans themselves in their own right. In my opinion, such children would be entitled to the State benefits provided for in said Chapter 5, supra, and also to the Federal benefits provided for in the Veterans Readjustment Benefits Act of 1966, PL 89-358, signed by the President on March 3, 1966. The exclusion in Section 82(14), supra, from State benefits upon receiving equal or greater Federal benefits does not apply to the said veteran's children who are entitled to receive State benefits under Chapter 5, supra.

Your attention is invited to the fact that the benefits provided for by the State of Alabama under Chapter 5, supra, and those provided for by the Federal Government under the Veterans Readjustment Benefits Act of 1966, supra, are not duplications. The benefits under the State law are for tuition and fees, which payments are made directly to the educational institutions involved. On the other hand the Federal benefits in question are in the nature of scholarships paid directly to the individual veterans involved.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

April 20, 1966

Honorable O. H. Florence, Register
Tenth Judicial Circuit of Alabama
225 Courthouse
Birmingham, Alabama

Registers — Costs and Fees — Facsimile Signatures

Fee allowable to Registers under Title 11, Section 27, Code of Alabama 1940, Recompiled 1958, for "each certificate or affidavit without seal, .65" attaches on each validation cer-

tificate of decree of Court, whether the Register's signature be made manually or by facsimile.

Opinion by Assistant Attorney General Screws

Dear Sir:

Your request for an official opinion bearing date of April 7, 1966, is as follows:

"Your opinion is requested with respect to the charge by the Register for the executive by facsimile signature of a certificate under Section 6 of Act No. 859 of the 1953 Regular Session of the Alabama Legislature, 1958 Recompiled Code, Title 37, Section 359 (13).

"A petition was filed in the Circuit Court of the Tenth Judicial Circuit, in Equity No. 140-281, by The Industrial Development Board of the City of Leeds, and the members of its Board of Directors as petitioners, against the taxpayers and citizens of the City of Leeds and others, as defendants, under the aforesaid Act No. 859, 1958 Recompiled Code, Article 4, Chapter 6, Title 37, to validate $210,000 principal amount of First Mortgage Industrial Development Revenue Bonds of the Board. The final decree validating the bonds prescribed, as provided in Section 359 (13) of Title 37, supra, as follows:

" '4. At the time of the delivery of the Bonds to the purchaser thereof, the Secretary of the Board is hereby directed to cause to be stamped, printed or written on each of the Bonds a legend substantially as follows:

" ' "Validated and confirmed by decree of the Circuit Court of Jefferson County, State of Alabama, rendered on the 14th day of October, 1965." '

"The Register of this Court is authorized and directed to sign such legend in his capacity as such Register by causing to be imprinted or otherwise reproduced thereon his signature in facsimile as authorized by Acts of Alabama Legislature of 1959, approved October 6, 1959, page 823; Title 1, Section 4(1) Recompiled Code of Alabama.

"Title 1, Section 4(1) of the 1958 Recompiled Code referred to above provides that any signature required or permitted to be placed on any instrument for the purpose of certifying to the validation thereof may be imprinted or otherwise reproduced thereon in facsimile and it shall not be necessary that such signature be manually inscribed thereon.

"In accordance therewith and the directions in the validation order, the validation certificate and my signature thereon were prepared in facsimile. A form of the Bond is enclosed for your information. You will note the certificate on the reverse thereof.

"At the time of the closing of the bond issue and at the request of the bond attorneys, Dumas, O'Neal and Hayes, I manually signed a certificate, a copy of which is enclosed.

"You will note that the provisions of Section 359 (13) of Title 37 of the 1958 Recompiled Code are quite similar to the provisions of Section 175 of Title 7 with respect to the judicial validation of obligations of a county and city or other political subdivision. I also note that an opinion was rendered by the Attorney General with respect to Section 175 of Title 37 that the statement thereunder is a certificate for which the Register was entitled to a 25¢ fee to be paid by the city or other unit validating its obligations. **Reports of the Attorney General,** October-December, 1940, p. 92.

"This opinion was rendered based on manual execution by the Register of the validation certificates printed on the reverse of each of the obligations involved. This opinion was also rendered prior the adoption of the statute referred to above authorizing facsimile signatures on validation certificates.

"Your opinion is respectfully requested as to the appropriate charges to be made under the facts and circumstances outlined above.

"P.S. A fee of $ .25 referred to above is now $ .65 as provided in Title 11, Section 27, Alabama Code. O.H.F."

In answer to your inquiry, it is my opinion that the 65¢ fee allowable to Registers under Title 11, Section 27, Code of Alabama 1940, Recompiled 1958, for "each certificate or affidavit without seal, .65 " attaches on each validation certificate, whether the Register's signature be made manually or by facsimile.

As stated in your letter, an opinion rendered by this office, reported in Quarterly Report of Attorney General, Volume 21, page 92, held that said fee (then 25¢) attached on each manual execution of the Register's signature on each validation certificate, similar to the ones under present consideration.

Title 1, Section 4(1), Code of Alabama 1940, Recompiled 1958 (1963 Cumulative Pocket Part), provides as follows:

"§ 4(1). **Execution of bonds, warrants, notes, etc., with facsimile signatures and seals.** — (a) In any instance where any bond, warrant, note, or certificate is issued by any county, municipality, board of education, or public corporation in this state and is required or permitted to be executed or attested by more than one person, a facsimile of the signature of any one of [or] more of the persons or officers executing or attesting the same may be imprinted or otherwise reproduced on such instrument; provided, that at least one signature so required shall be manually subscribed thereon. In any instance where any interest coupons are attached to any such bond, warrant, note or certificate in evidence of installments of interest

payable thereon, a facsimile of any or all of the signatures required or permitted thereon may be imprinted or otherwise reproduced thereon and it shall not be necessary that any signature be manually inscribed on any such interest coupon. Any signature required or permitted to be placed on any such instrument for the purpose of attesting or authenticating the same, or certifying to the registration or validation thereof, or certifying to any other matter pertaining thereto, may be imprinted or otherwise reproduced thereon in facsimile, and it shall not be necessary that such signature be manually inscribed thereon. Any seal required or permitted to be affixed or impressed on any such instrument may be imprinted or otherwise reproduced thereon in facsimile.

"(b) Notwithstanding the fact that, prior to delivery of any bond, warrant, note, or certificate executed as provided in the preceding subsection, any of the officers whose signatures appear thereon should cease to hold office, such instrument shall be valid to the same extent as if the officers whose signatures appear thereon were serving as such officers at the time of such delivery.

"(c) This section shall not be construed to repeal any other law authorizing the execution with facsimile signatures of or the reproduction of facsimile seals on, bonds, warrants, notes, or certificates for the payment of money."

The facsimile signature above authorized has the force and effect of a manual signature, and for all intents and purposes served as a manual signature. In the instant case, the facsimile signature of the Register is tantamount to the manual signature of said Register. In my opinion, the 65¢ fee provided for in Title 11, Section 37, supra, would attach to each instrument on which said facsimile signature appears the same as if it were the Register's manual signature itself.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

April 20, 1966

Honorable G. W. Tobias
Assistant Chief Examiner
Department of Examiners of
Public Accounts
State of Alabama
Montgomery, Alabama

Examiner of Accounts — Officers and Offices — State and State Departments

1. The Assistant Chief Examiner, appointed by Chief Examiner of Public Accounts, assumes the duties of the

Chief Examiner in his absence and performs such other duties as designated by the Chief Examiner.

2. During periods of temporary absence of the Chief Examiner from his office, the Assistant Chief Examiner shall exercise the duties and powers of the Chief Examiner of Public Accounts.

Opinion by Assistant Attorney General Webb.

Dear Mr. Tobias:

I have your letter of April 18, 1966 in which you request my official opinion as follows:

"The Chief Examiner of Public Accounts, Honorable Ralph P. Eagerton, as you may know, is temporarily absent from his duties due to an illness suffered while in attendance at the executive committee of the National Legislative Conference and, at the present time, is hospitalized in San Francisco.

"As you are aware, I serve as Assistant Chief Examiner under the provisions of Act No. 791, Acts of Alabama 1953, page 1085. Section 1 of this act specifies that the Assistant Chief Examiner shall exercise such authority and perform such duties as the Chief Examiner may prescribe. The duties prescribed by the Chief Examiner have authorizations as well as the Rules of the Department of Examiners of Public Accounts adopted by the Chief Examiner. Rule 1c provides:

" 'The Assistant Chief Examiner, appointed by the Chief Examiner, assumes the duties of the Chief Examiner in his absence and performs such other duties as designated by the Chief Examiner. Among these duties are included general superintendence of all personnel, processing of reports, supervision of rules and regulations, and approval of all expenditures.'

"I respectfully request your official opinion as to whether or not I may exercise the duties and responsibilities of the Chief Examiner during his temporary absence from office due to this illness or, in the alternative, if the Legislative Committee on Public Accounts should designate those duties to be exercised."

The Department of Examiners of Public Accounts, organized under the provisions of Act No. 351, Acts of Alabama 1947, page 231, is headed by the Chief Examiner of Public Accounts, under the general supervision of the Legislative Committee on Public Accounts. Section 3 of Act No. 351, supra, as amended by the provisions of Act No. 85, Acts of Alabama 1961, page 100, provides for the appointment of the Chief Examiner of Public Accounts and for the filling of vacancies in the office of the Chief Examiner arising from any cause. Under the terms of your letter as set forth and my understanding of the facts, there is, in my opinion, no vacancy in the office within the meaning of this section. Quarterly Report of the Attorney General, Vol. 6, page 5, and Vol. 8, page 324.

The Assistant Chief Examiner, as pointed out by you, is appointed by the Chief Examiner under the provisions of Section 1, Act No. 791, Acts of Alabama 1953, page 1085, which reads as follows:

> "The Chief Examiner of Public Accounts may, with the approval of the Legislative Committee on Public Accounts, appoint an Assistant Chief Examiner, **who shall exercise such authority and perform such duties as the Chief Examiner may prescribe.** The Assistant Chief Examiner shall be selected because of his fitness and capacity; he must be some person who is eligible for appointment to, or holds the position of Public Accounts Examiner II in the classified service of the State; and he must have had not less than eight years actual experience as an examiner of public accounts; provided however, that the Chief Examiner may, at his discretion, have the employee so appointed revert to the classification previously held by him under the classified service, and appoint some other employee, qualified under the provisions of this act, as Assistant Chief Examiner." (Emphasis supplied.)

As pointed out by you, the Rules of the Department of Examiners of Public Accounts adopted by the Chief Examiner prescribe in Pargaraph 1c that the Assistant Chief Examiner assumes the duties of the Chief Examiner in his absence. In my opinion, the Rules of the Department, as adopted by the Chief Examiner, are sufficient authority, in view of the wording of Act No. 791, supra, for you to assume all duties and authority of the Office of Chief Examiner during his said temporary absence from the office.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

April 25, 1966

Mr. W. Douglas Amos
Secretary
Ala. Liquefied Petroleum Gas Board
660 Adams Avenue
Montgomery, Alabama 36102

LP Gas Board — Words & Phrases — Liquefied Petroleum Gas

1. The LP Gas Board of Alabama has the authority to make regulations governing butane gas systems in Alabama.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of March 16, 1966 is as follows:

"I am writing at the direction of the Alabama Liquefied Petroleum Gas Board to obtain your ruling on a question of increasing significance to the LP-gas industry in Alabama.

"The board wishes to be advised of the scope of its authority in acting to prohibit the use of butane gas systems in the state after a specified date. These systems, the vast majority of which date back to the early days of the industry, pose a growing problem in at least two areas: adequate supply of butane gas and efficient regulation.

"An inadequate supply of butane gas is more and more contributing to a situation in which LP-gas dealers are servicing butane gas systems with propane gas. This practice is unsafe, but its regulation is impossible. It is estimated that fifty inspectors in the state cannot satisfactorily regulate the situation as it now stands.

"During the past few years, many LP-gas dealers have initiated action to change over these systems to propane installations. However, thousands of the outdated butane systems remain in use. And it is the considered opinion of the board that action to outlaw the systems after a specified date is essential in resolving the problem.

"The board will be grateful for your opinion as to whether or not it can proceed with action which would prohibit the use of butane gas systems on a specified date."

Act No. 220 Acts of Alabama 1965, p. 305, provides, in pertinent part, as follows:

"Section 5. The board shall have the power to make and enforce rules and regulations governing the design, construction, location, installation and operation of containers, tanks, systems and equipment for storing, utilizing, handling and transporting liquefied petroleum gases, and rules to secure the substantial accuracy of all meters, safety devices and regulators generally used in connection with such gases. Said rules and regulations shall be such as are reasonably necessary for the protection of the health and safety of the public, and persons using such gases, and shall be adopted only after a public hearing thereon. All rules and regulations shall be printed in pamphlet form and shall be mailed to all liquefied petroleum gas dealers registered with the board and to any person upon request, provided the board may adopt as its own rules the published regulations of the National Fire Protection Association, or any other nationally recognized agency covering the same subject, by reference thereto. All rules and regulations so adopted by the board shall become effective thirty (30) days after adoption thereof."

"Section 1. As used in this Act, 'liquefied pertoleum gas' shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same; propane, propylene, butanes, (normal butane or isobutane), and butylenes; 'board' shall mean the Alabama Liquefied Petroleum Gas Board, and 'person' shall mean every natural person, firm, co-partnership, association or corporation."

As you can see, Section 1 of Act No. 220, supra, defines "liquefied petroleum gas" to include butanes and butylenes.

Therefore, I would conclude that the LP Gas Board by virtue of the authority vested in it by Section 5 of Act No. 220, supra, would regulate butane gas systems in Alabama.

In support of this conclusion I refer you to the case of **Balthazor et ux. vs. B & B Boiler & Supply Co., et al.,** 169 Kan. 188, 217 P. 2d 906, wherein the Supreme Court of Kansas said:

"[1] In the case we are considering propane is a name given to a liquid which is really natural gas compressed at a low temperature and when released by means of the regulator through a small vent becomes an inflammable gas which flows through pipes to stoves. * * * "

Also I cite you to the Court of Appeals of Tennessee in the case of **J. W. Gable vs. Tenn. Liquefied Gas Company,** 325 SW 2d 657, wherein it said:

"Propane gas takes a gaseous form at normal temperatures and is kept in liquid form at such temperatures by application of pressure. In its pure form it is colorless, and odorless. An odor is supplied by the introduction of a mercaptan, usually ethyl. One of the properties of the gas, already mentioned and of significant importance in the circumstances of this case, is that it is 'about a little over one and a half times as heavy as air' so that, according to plaintiffs' expert chemist, 'it will sink if the gas comes into the presence of air into a room, both being at the same temperature.' "

" 'Propane' is a chemical combination of carbon and hydrogen, about one and one half times heavier than air."

"Butane gas is a manufactured product, a liquefied petroleum gas which is between gasoline and natural gas. It is inflammable, explosive, has a distinct odor, and is very volatile. It boils at approximately 26 degrees above zero. It has 3,300 B.T.U.'s per cubic foot for heat value. It is heavier than air and sinks below the surface of water."

Hence, it is my opinion that the LP Gas Board of Alabama has the authority by virtue of Section 5 of Act No. 220, supra, to make and enforce rules and regulations governing butane gas systems in Alabama. But

I am also of the opinion that the Board cannot promulgate nor enforce rules or regulations that go beyond the statutory authority set out in Section 5, supra.

As I understand the statute, its purpose is to provide a safe and efficient LP gas system for use by the public, not to authorize the LP Gas Board to arbitrarily determine that a particular gas system will not be allowed to operate after a specified date.

After you have promulgated your rules you may wish to obtain an opinion from this office as to their legality; if so, I will be glad to consider them for you.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

April 25, 1966

Honorable David W. Pruett, Chairman
Colbert County Board of Revenue
Tuscumbia, Alabama

Counties — Hospitals — Mental Health Centers

1. A county may contribute out of its general fund to the construction of a mental health clinic as an annex to city-county hospital organized and operating under Title 22, Section 189, Code of Alabama 1940, Recompiled 1958, which hospital is located without the territorial confines of the county making such contribution.

2. Although a hospital may be considered a public building under Section 215 of the Constitution of Alabama 1901, a county's public building fund created pursuant thereto may not be used toward the construction of a hospital located without the territorial confines of such county.

Opinion by Assistant Attorney General Screws

Dear Sir:

Your request for an official opinion bearing date of March 31, 1966, is as follows:

"The Board of Revenue of Colbert County, Alabama, has been requested to contribute $50,000 towards the construction of a mental health clinic and hospital which is to be located in Lauderdale County at Florence, Alabama. The function of this mental health clinic and hospital is to serve the area of North Alabama and is to be built with

funds from governmental entities in Lauderdale and Colbert County. The plan is that in addition to the local money which will be obtained from local governmental entities that Hill-Burton money and Appalachian funds from the Federal government will be used in the construction of this mental health clinic and hospital. The proposed plan calls for a one and a half million dollar project with $300,000 coming from local governmental entities and $1,200,000 coming from the Federal government through the Hill-Burton Agency and the Appalachian Agency of the Federal government. My inquiries to you are as follows:

"1. Can the Board of Revenue of Colbert County make a contribution towards the construction of this mental health clinic which will not be located in Colbert County, but will be located in the adjoining county of Lauderdale, which however will provide services to the people of Colbert County.

"2. If such a contribution can be made from what funds should said contribution be paid — the public building road and bridge fund or the general fund."

In addition to the information given in your letter, I am informed that the mental health clinic and hospital in question will be an addition to the Eliza Coffee Memorial Hospital at Florence, Lauderdale County, Alabama, which hospital was organized and is operating under Title 22, Section 189, Code of Alabama 1940, Recompiled 1958. I am also informed that your county does not have a special hospital tax under the recent constitutional amendments, and that your county beer tax for hospital purposes is completely obligated.

At the outset, I wish to call your attention to two recent opinions of this office dealing with mental health centers. The first of these opinions to Dr. Ira L. Myers, State Health Officer, dated November 9, 1964, and reported in Quarterly Report of Attorney General, Volume 117, page 29, held as follows:

"1. The State Board of Health is the sole and official agency of the State to receive and administer any and all funds for the purpose of constructing, equipping, maintaining, and operating community mental health centers.

"2. The phrase 'public health hospitals, health centers, and related facilities' includes mental health centers."

The other opinion to Dr. Myers, dated April 14, 1965, and reported in Quarterly Report of Attorney General, Volume 119, page 16, held as follows:

"The State Board of Health is the single State agency in Alabama which has authority to receive and administer funds appropriated by the Congress of the United States under Public Law 88-164 for the construction of facilities for the mentally retarded."

The general authority of a county to contribute out of its general fund to hospitals, either located within or without the territorial confines thereof, is found in Title 37, Section 342, Code of Alabama 1940, Recompiled 1958, as last amended, when construed in pari materia with Title 22, Sections 189 and 190, Code of Alabama 1940, Recompiled 1958. — Quarterly Report of Attorney General, Volume 20, page 8. Cf. **Laney v. Jefferson County**, 249 Ala. 612, 32 So.2d 542. It should here be noted that the term "municipality," as used in Section 342 and related sections, shall include any county, incorporated city, or town in this state. See Title 37, Section 341, Code of Alabama 1940, Recompiled 1958.

Since mental health centers come within the term "hospitals," I am of the opinion that the above is applicable to county appropriations to the mental health center in question located without Colbert County.

In answer to your second inquiry, it is my opinion that the contribution in question should be made from the county general fund, although a hospital may be considered a public building under Section 215 of the Constitution of Alabama 1901 (Quarterly Report of Attorney General, Volume 49, page 120). It is my opinion that that unobligated portion of the county's public building fund created pursuant to Section 215 of the Constitution of Alabama 1901 applies to public buildings within the territorial confines of the county involved.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

May 10, 1966

Hon. Earle C. Moody
Mayor, City of Dothan
Dothan, Alabama

Municipalities — Municipal Corporations — State Board of Health — Health and Health Department

1. A municipality has authority to require that every habitable house within its police jurisdiction shall have a water flush toilet, provided that, either a municipal or community sewage system is available to carry away the waste, or else the lot on which the house is located is large enough to support the field of a septic tank.

Opinion by Assistant Attorney General Robert Miller.

Dear Sir:

I am in receipt of your request for an opinion which states:

"Your opinion is requested on the following question: Does the

City of Dothan have the legal authority to require in its Minimum Housing Code that every habitable house within its city limits and police jurisdiction shall have a water flush closet?

"The above question has arisen because the County Health Officer, operating under the State law and the Rules and Regulations promulgated by the State Board of Health, has served several notices to home owners within the city limits of Dothan requiring the installation of pit privies, whereas the Minimum Housing Code of said City requires the installation of water flush closets."

In my opinion, the answer to your question is in the affirmative. Title 37, §492, Code of Alabama 1940 (Recompiled 1958) states in regard to this question:

"In addition to the powers hereinbefore granted to them, all cities and towns of this state shall have the following powers: * * * to adopt such ordinances and regulations as the council may deem necessary to insure good sanitary condition in public places or in private premises in the cities and towns. * * * "

Considering, however, the implications of the second paragraph of your letter, above, I have made inquiry regarding the background of your question and have received the following information:

1) Your city attorney has informed me that your Board of Commissioners has adopted the Rules and Regulations of the State Board of Health regarding safe disposal of sewage wastes. These regulations then have become a part of your own ordinances, and §23 thereof lists six basic requirements for the use of individual septic tank systems. The fourth of these requires that lot sizes be at least 15,000 square feet where public water supply is used, and 20,000 square feet where private water supply is used.

Therefore if you are going to require water flush toilets for all habitable houses, then every house must be on a lot of sufficient size to support a septic tank, or it must be connected to a municipal or community sewage system.

Thus, if a house is on a lot that will not support a septic tank and is also not available to a sewer line, then you have a conflict in your city ordinances.

2) The Department of Public Health informs me that in the latter situation where insanitary privies are presently in use that they have ordered the installation of sanitary pit privies.

Assuming that my information is correct, then it is my further opinion that the State Board of Health, operating through its local County Board of Health and County Health Officer, has authority to require the use of a sanitary pit privy, instead of an insanitary privy which dumps

its wastes on the surface of the ground, where the lots are too small to support septic tanks and no municipal or community sewage system is available. See Title 22, § 7, Code of Alabama 1940 (Recompiled 1958); and Constitution of Alabama §89.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

May 12, 1966

Hon. Earl McNeill
Register in Chancery
Wilcox County
Camden, Alabama

Elections — Absentee Ballots — Applications — Runoffs

A person entitled to vote absentee ballot by mail is only required to make one application for first primary and runoff primary.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of May 10, 1966, is as follows:

"In view of the fact that there is a limit of time between the May 3, 1966 and May 28, 1966 primary elections in which a service man stationed a far distance from home may apply for his absentee ballot for the May 31 election, it is respectfully requested that you give your opinion as to whether the application of each applicant who asked for, obtained and voted an absentee ballot in the May 3, 1966 primary election is considered as making an application for the May 31 run-off primary, whether said voter sends in another signed application for an absentee ballot for the May 31 run-off primary or not.

"Also, will your ruling on the above question apply to all types of absentee applicants and voters?

"Thanking you for your consideration as there is definitely a time element involved, I am".

My answer to your inquiry is in the affirmative.

When a person makes application by mail to vote an absentee ballot, he indicates that he wants to participate in the primary election, and exercise his right to vote an absentee ballot in both the first primary and

in the runoff primary. In truth and in fact, the runoff primary is merely a continuation of the first primary and both constitute a single election.

You are, therefore, advised that those persons who were entitled to vote absentee ballots by mail, and have made application for absentee ballots for the first primary, are entitled to vote an absentee ballot in the runoff primary without making any further application for a ballot.

You should, therefore, mail to all persons who made application for an absentee ballot by mail for the May 3 primary an absentee ballot for the runoff election to be held on May 31.

This opinion has no application to an absentee voter who must appear in person before the register, but only applies to those absentee voters who are entitled to vote absente by mail.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

May 20, 1966

Honorable B. W. Thornton
Tax Collector, Limestone County
Limestone County Courthouse
Athens, Alabama

Taxation — Ad Valorem — Notice to the Taxpayer

1. Section 252, Title 51, Code of Alabama 1940, as amended, requires that notice of a delinquent tax sale be served on the taypayer by the tax collector, or his deputy.

2. Such notice must be on the person to whom addressed by handing a copy to such person, or his agent, or by leaving a copy thereof at the residence of such person or place of business of such person, or his agent, or by sending a copy of such notice to the party by registered mail.

3. Notice by registered mail requires that the notice be marked "for delivery only to the person to whom addressed."

4. Failure to include the phrase "for delivery only to person to whom addressed" is failure to comply with the statute and results in failure of notice within the meaning of the statute.

5. Admission by the taxpayer of receipt of notice renders the question of registration and statutory compliance moot.

Opinion by Assistant Attorney General Burson

Dear Sir:

Your request for an opinion dated March 18, 1966, is as follows:

"I would like an official opinion on the following question as soon as possible:

"According to the Code Book Title 51, Section 252—In sending out delinquent tax notices which I have turned over to the Probate Judge, such notices should be served by the Tax Collector or his deputy to the person to whom it is addressed and service of such notice be made by handing a copy thereof to party to whom it is addressed or his agent or by leaving a copy thereof at the residence or place of business of such party or his agent or by sending a copy of said notice to party to whom it is addressed by registered mail, postage prepaid, marked for delivery only to person whom it is addressed and return receipt demanded.

"The question I am concerned with is, if I mail these registered letters out and it is not marked on the card 'deliver to addressee only' and someone else in the household signs for this registered mail other than the addressee, is it legal to levy against the addressee's real estate or personal property should this tax not be paid?

"Thank you for your attention in this matter."

Your question must be answered in the negative. Section 252, Title 51, Code of Alabama 1940, as amended, provides for "service of notice on taxpayer." The section provides, in part, as follows:

". . . Such notice must be served by the tax collector, or his deputy, on the person to whom it is addressed, and service of such notice may be made by handing a copy thereof to the party to whom it is addressed, or his agent, **or by sending a copy of said notice to the party to whom it is addressed, by registered mail, postage prepaid, marked 'for delivery only to the person to whom addressed,'** and return receipt demanded addressed to the tax collector of the county; and with his endorsement thereon, showing how and when served, or show his reason for not serving the same, and it must be by the collector, or his deputy, returned into court on or before the first day of the next term thereof. . . ." (Emphasis supplied)

From your inquiry it appears that you contemplate only one of the alternative methods of notice set out above, that is, notice by registered mail. The statute is explicit in this regard. It requires, if you elect to give notice by registered mail, that the envelope be "marked 'for delivery only to the person to whom addressed.' " Therefore, if you send a registered letter which purports to be notice without the notation as required above, there is, in fact, not notice within the contemplation of the statute.

The cases which have construed Sections 252 and 259, Title 51, Code of Alabama 1940, as amended, support the foregoing conclusion. The early case of **Carlisle v. Watts,** 78 Ala. 486 (December Term 1885), is authority for the fact that it is necessary that the tax officials sustain the burden of showing that statutory notice has been carried out in every detail if the validity of a tax sale for delinquent taxes is to be upheld. The Supreme Court of Alabama in the **Carlisle** case stated, in part, as follows:

> "Whether, in such case, the decree of sale is conclusive of a valid assessment as to the person against whom the taxes are assessed, or whether the description and statements, as entered in the book delivered to the judge of probate, are sufficient to give the court jurisdiction of the subject-matter, are questions it is not necessary to consider or decide. The statute provides, that thirty days before the beginning of the term of the court, for which the cause is set for trial, the probate judge shall issue to the owner, his agent or representative, a notice in the form prescribed; a copy of which must be served upon, or left at the residence of such owner, his agent or representative; and if the owner is unknown, or a non-resident, the notice shall be by publication in a newspaper; or, if no newspaper is published in the county, by posting notices at the door of the courthouse for three weeks. **Service of notice, as required by the statute, is preliminary and essential to jurisdiction of the person."** (Emphasis supplied)

The statute construed by the **Carlisle** case did not provide for service by registered mail as does Section 252, supra. However, the case clearly enunciates that failure of statutory service results in lack of jurisdiction for the sale and is, therefore, an invalid sale.

The case of **Landrum v. Davidson,** 252 Ala. 125, 39 So. 2d 662, is one in which the validity of a tax sale was questioned. The action was one for damages. The facts as set out in the opinion of the Supreme Court, are, in part, as follows:

> "They [the damages] all grow out of the cutting of some timber on thirteen acres of land claimed by plaintiff under a tax deed to him, dated September 25, 1943, by the probate judge, which recited that on July 8, 1940, a decree was rendered by the probate court for the sale of said land for taxes due by D. E. Vines, executor of the estate of Lucinda Vines, the owner of the land, and that the sale was made on September 12, 1940, and bid in by the State, and that plaintiff is the present owner and holder of the certificate of purchase.
>
> "The evidence does not set out any of the proceedings leading to the tax sale. The evidence does not show that the tax collector made report to the court that he was unable to collect the taxes assessed against the land without a sale of such land. Title 51, sec-

tion 249, Code. The deed to plaintiff by the probate judge does not contain such a statement, Title 51, section 277, Code, nor that the notices required by Title 51, sections 252 and 259 were given."

The Court found that:

". . . The evidence does not show that notices required by Title 51, sections 252 and 259, supra, were given, which the record must affirmatively show were given."

The case of **City of Opp v. Brogden,** et al, 236 Ala. 180, 181 So. 752, avers that Section 217(a), Revenue Act of 1935, establishes "the form of notice to be given delinquents" and that if this form is followed it suffices for all purposes."

Annotations following the case of **Cota v. McDermott,** 16 NW 2d 54, 155 ALR 1271, discuss the general rules for service of notice by mail or registered mail in tax proceedings. The discussion is as follows:

"It is a general rule that where service of notice by mail or registered mail in tax proceedings is expressly required or authorized by statute, conformity with the statute, and with the rules and procedure of the Post Office Department of the United States pertaining to the kind of mailing specified or allowed thereby, is a sufficient compliance, granting that all other duties and conditions contemplated as conditions precedent to such mailing have been fulfilled."

The Alabama case of **Howell & Graves v. Curry,** 242 Ala. 122, 5 So. 2d 105, while it supports the conclusion that notice as required by the statute must be complied with, nevertheless establishes the fact that statutory notice can be waived. The question in the **Howell & Graves** case centered on whether the letter containing the notice of assessment had, in fact, been registered. The evidence before the court tended to prove that the letter had been registered. In addition to that the taxpayer admitted receipt of the letter. Thus according to the opinion of the Court the question of registration became moot. The court in the **Howell & Graves** opinion stated, in part, as follows:

"Since complainant admits the receipt of the notice of assessment, the reason for the registration has been satisfied. The purpose of this provision as to the manner of service was to assure receipt of the notice: not to make the prescribed method mandatory so as to render the assessment invalid when the required written notice had actually been given and received. We think the legislature intended to provide a method which would afford sufficient proof of service when receipt of the required written notice was not shown."

Thus it is reiterated the notices of assessment should be sent by registered mail with the phrase thereon "for delivery only to the person

to whom addressed." Section 252, supra, requires this and failure to follow the explicit directions of the statute is failure of notice.

However, in accordance with **Howell & Graves,** supra, if the taxpayer admits that he received notice the reason for requiring registration and "for delivery only to the person to whom addressed" has become moot and the admission by the taxpayer renders the notice as valid as it would have been had the statutory provisions been carried through completely.

In any proceeding questioning the validity of a tax sale because of lack of notice, the burden would be upon you as tax collector to sustain proof that notice in full compliance with Section 252, supra, had, in fact, been delivered.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

May 27, 1966

Honorable G. H. Wright
Mayor, City of Auburn
Auburn, Alabama

Funds — Municipalities

Under the facts presented, a municipality may not compute "interest" payable from its special public improvement fund to its general fund as a portion of the total cost of public improvement to be assessed against the benefited property.

Opinion by Assistant Attorney General Gish.

Dear Mr. Wright:

Your request for an official opinion, dated May 2, 1966, is as follows:

"Please consider the following a request for an official opinion concerning the following.

"Your attention is called to Title 37, Chapter 11, Article 1, Section 519, and any other applicable provision of the Code of Alabama, 1940, or any other applicable provision of the Constitution of the State of Alabama, 1901.

"The City Council proposes to establish a special fund from which it will pay out the legitimate costs necessary for the completion of an assessible public improvement project.

"This fund is to be established by borrowing unappropriated surplus funds from the General Fund of the City of Auburn, as a temporary

loan; such funds to be repaid to the General Fund at the end of construction, at which time it is proposed to permanently finance said improvement through an assessment public improvement bond issue.

"It is proposed that the resolution establishing the said special fund and authorizing said loan from the General Fund stipulate that the loan shall bear a specific, reasonable rate of interest charge. (It is anticipated that this reasonable rate of interest charge in today's money market would be 4 per cent.)

"Question:

"Assuming compliance with all other applicable provisions of the laws concerning assessible public improvement, is the said interest charge payable from said special fund to the General Fund a legal assessible cost, necessary for the completion of such improvement, and thereby a portion of the total cost to be assessed against the property benefiting from the proposed improvement?"

Title 37, Section 519, Code of Alabama 1940, as amended by Act No. 849, Acts of Alabama 1953, page 1141, reads as follows:

"§ 519. Cost of proposed improvements; how paid. The council may pay out of the general funds of the city or town, or any special fund that may be provided for the purpose, such portion of the cost of the proposed improvement as it may deem proper. The cost of any improvement contemplated by this article shall include the expense of the preliminary and other surveys, the inspection and superintendence of the work, the preparation, publication, and mailing of the notices, resolutions, and ordinances required by this article, the cost of construction, the printing of bonds, the interest on money borrowed during construction or on bonds when bonds have been issued in anticipation of the collection of assessments, the preparation of proceedings authorizing the issuance of notes or bonds under the provisions of this article and the rendition of the approving opinions with request thereto, and any other expenses necessary for the completion of such improvement."

The cost as defined by Section 519, as amended, supra, of constructing a public improvement, after completion thereof, may be assessed against benefited property in accordance with the provisions of Title 37, Section 524, Code of Alabama 1940.

You will note that Section 519, as amended, supra, specially provides that a municipality may use money from its general fund as well as from a special fund such as the one to which your request refers to pay the cost of a public improvement.

The arrangement proposed by your request will be the mere transfer of money from one municipal fund to another municipal fund and

such money will not, in my opinion, be "borrowed" within the meaning of Section 519, as amended, supra. Cf. Quarterly Report of Attorney General, Volume 112, page 65.

Therefore, your question is answered in the negative.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

June 6, 1966

Honorable Joe M. Bonner
Attorney for Wilcox County
Court of Commissioners
Camden, Alabama

Ad Valorem Tax — Exemption — Taxation

A chipping mill which produces wood chips as one of the stages of the manufacture of wood pulp and wood pulp products comes within the provisions of Title 51, Section 3, as Amended, and Section 6, Code of Alabama 1940, and is eligible for the exemption from ad valorem taxes authorized by said sections.

Opinion by Assistant Attorney General Livingston

Dear Sir:

Your request for an official opinion dated May 24, 1966, is as follows:

"As Attorney for Wilcox County Court of County Commissioners we would like to have your opinion as to the following:

"Enclosed herewith is a copy of the application filed with our Court of County Commissioners by Allied Paper Corporation, an Illinois Corporation, asking for the remission of and exemption from certain taxes, under the provisions of Section 3, Title 51, Code of Alabama, 1940, Recompiled as amended. This Corporation operates a chipper mill, and, of course, is located in Wilcox County, Alabama. Please give us an official opinion as to the following questions:

"1. Does this Corporation come under the provisions of the above stated law and is it entitled to certain tax exemptions?

"2. If so, what particular taxes would be exempt by our Court of County Commissioners and for what period of time?

"3. Does this Corporation also have to make application with the State Department of Revenue?"

It appears that the application for exemption was filed by petitioner with the Court of County Commissioners on or about December 30, 1965;

that the construction of the plant was commenced on August 17, 1964 and completed on or about January 1, 1966. The first ad valorem tax lien would not attach to the completed plant until October 1, 1966. Therefore, the application was timely filed with the Court of County Commissioners. Quarterly Report of the Attorney General, Volume 64, page 37.

Title 51, Section 3, as amended, Code of Alabama 1940, provides, in part, as follows:

"§3. Exemption of certain factories, industries and plants. — For the purpose of encouraging the building, extending and operation of plants, industries and factories in this state for . . . the manufacture of bags and wood pulp products; . . . and for the manufacture, production or processing of any trade or commercial articles, materials, or supplies whether or not such articles, materials or supplies are specifically named herein; . . . the court of county commissioners, or other court or board having like jurisdiction of any county, and the constituted authorities of any city or town in which it is proposed to locate, or add to, or to extend any such factories or plants, are authorized and empowered to remit the taxes assessed for all county and municipal purposes, except for any schools and school district purposes, on such plants, industries or factories and on all extensions or additions to such plants, industries or factories as are already built and operating, and on all plants, works, machinery and other equipment of such plants, industries or factories, or additions thereto, or extensions thereof; . . . for a period of not exceeding ten years from the date of the incorporation or organization of such plants, industries or factories, if incorporated and organized under the laws of the state of Alabama, or for a period not exceeding ten years from the date of being granted permission to do business in the state of Alabama, if a foreign corporation, or from the date of completion of such plant, industry or factory, or from the date of the completion of such addition or extension thereof. . . . Provided nothing herein shall authorize the exemption of the land on which such plants, industries or factories are located or proposed to be located."

Although not included in your request, I would also like to consider the provisions of Title 51, Section 6, Code of Alabama 1940, which provides, in part, as follows:

"§6. Exemption of other factories, industries and plants from ad valorem taxes. — For the purpose of developing a market for Alabama pine and other trees and the products thereof, and of encouraging the construction, extension and operation of plants, industries and factories in the state of Alabama for the manufacture or production of pulp, paper, paper bags and other pulp products; . . . and for the manufacture, production or processing of any trade or commercial articles, materials or supplies whether or not such articles, materials or supplies are specifically named herein; . . . the department of revenue is hereby authorized and empowered to exempt from all ad valorem taxes for state purposes, and to remit any and all such

taxes which are, or may be, assessed thereon, each such plant, industry and factory, and extension thereof or additions thereto, including the works, machinery and all other equipment constituting a part of, or used in connection with, any such plant, industry or factory, or extension thereof or addition thereto, for a period of not exceeding ten years from the date of completion of such plant, industry, or factory, or extensions thereof, or additions thereto, but in no event the land on which such plant or factory shall be located . . . ."

Although the chipping mill does not manufacture wood pulp or wood pulp products, it is significant that plants that do are specifically mentioned in Sections 3 and 6, supra. However, in addition to those type plants specifically named, both Sections 3 and 6 include plants "for the manufacture, production or processing of any trade or commercial articles, materials or supplies." It appears that the purpose of the operations of the plant in Wilcox County is that of chipping wood to be used in the manufacture of wood pulp and wood pulp products. The application for the exemption states in paragraph 2 thereof as follows:

"That your petitioner is engaged in the manufacture of wood pulp and wood pulp products in the State of Alabama, with its principal place of operations in this State being located in the City of Jackson, Clarke County, Alabama. That in conjunction with said wood pulp and wood pulp product manufacture your petitioner has begun construction of a chipping mill near Catherine, Wilcox County, Alabama, for the purpose of producing wood chips as one of the stages of the manufacture of its final product of wood pulp and/or wood pulp products. Although your petitioner is now engaged in the manufacture of wood pulp and wood pulp products, its construction of this chipping mill should be regarded as new construction in view of the fact that it will constitute the only plant owned by your petitioner in this State; its wood pulp plant and other related facilities in the City of Jackson, Alabama, being owned by the Industrial Development Board of the City of Jackson and being leased to your petitioner; petitioner further alleges that as a new plant, such new construction is eligible for the tax exemptions granted by the statutes of Alabama, including but not being limited to Section 3 of Title 51 of the 1940 Code of Alabama as amended."

In the case of **State v. Try-Me Bottling Company,** 257 Ala. 128, 57 So.2d 537, the Court stated:

"The words manufacturing, processing and compounding are used disjunctively in the statute and are evidently intended to have a broad and all inclusive meaning. There is no attempt in the statute to limit or qualify their meaning. In other words, the three words so used are intended to cover all the operations or processes by which the finished or ultimate product has been integrated from elements originally diverse in their forms."

Research has not disclosed any cases specifically holding that a chipping mill is or is not one "for the manufacture, production or processing of any trade or commercial articles, materials, or supplies." Without attempting to cite the many cases wherein the Courts have considered the terms quoted above or similar terms, it is my opinion that for the purposes stated in the statutes, a chipping mill which produces wood chips as one of the stages of the manufacture of wood pulp and wood pulp products comes within the provisions of Sections 3 and 6, supra. See "Manufacture," 26 Words and Phrases, pages 609, et seq; "Processing," 34 Words and Phrases, page 261, et seq. Cf. **State v. Joe H. Brady & Associates,** 264 Ala. 397, 87 So.2d 852; **State v. Grayson,** 271 Ala. 35, 122 So.2d 126.

The first part of your second question has been answered in an opinion of this office dated April 4, 1966 to Honorable G. H. Stacey, Judge of Probate of Bibb County, wherein it was held that the plant exemption under Section 3, supra, refers only to ad valorem taxes. Section 6, supra, specifically refers only to ad valorem taxes. Your attention is called to that part of Section 3 which states that the land on which the plant is located cannot be exempt and the exemption cannot include taxes for schools and school district purposes. Also, in view of the fact that the Allied Paper Corporation is a foreign corporation, that part of Section 3, authorizing the exemption of the capital stock (share stock) from ad valorem taxes, is not applicable since the share stock tax levied by Title 51, Section 25, Code of Alabama 1940, applies only to domestic corporations. In answer to the second part of your second question, the Court of County Commissioners has the authority to exempt the plant in accordance with Section 3 for a period not exceeding ten years from the date of being granted permission to do business in the State of Alabama, since it is a foreign corporation, or from the date of completion of such plant. According to the application, the Allied Paper Corporation, an Illinois corporation, was qualified to do business in the State of Alabama on July 19, 1963, but the plant in question was not completed until on or about January 1, 1966. Therefore, the exemption, if granted, should be effective for the tax year beginning October 1, 1966 and continue for the period granted not to exceed ten years.

The answer to your third question is in the negative if the corporation desires only the exemption authorized by Section 3, supra. However, if the corporation also desires the exemption authorized by Section 6, supra, an application must be filed with the State Department of Revenue. If such application is filed with the Department of Revenue under Section 6, it must be filed in time so that the exemption order, if granted, can be issued before a tax lien attaches on October 1, 1966, the "tax or law day." Quarterly Report of the Attorney General, Volume 64, page 37.

Yours very truly,

RICHMOND M. FLOWERS
Attorney General

June 23, 1966

Mrs. Dorothy S. Hitchcock
Executive Secretary
The State Employees' Insurance Board
Association Building
Montgomery, Alabama

State Employees' Insurance Board — Judges — District Attorneys — Court Reporters — Insurance

1. (a) Circuit Judges who receive part of their compensation from the counties comprising their circuit are not eligible for the insurance authorized by Act No. 833, General Acts of Alabama 1965, p. 1564.

(b) Circuit Judges who receive their entire compensation from the State of Alabama will be eligible for the insurance authorized by Act No. 833, supra, at the beginning of their new terms commencing after July 1, 1966.

2. The State's District Attorneys are governed by statutes similar to those affecting Circuit Judges and, consequently, they would be eligible or ineligible for the insurance authorized by Act No. 833, supra, as are the Circuit Judges.

3. (a) The Court Reporters in the State of Alabama receive part of their compensation from the counties comprising their circuits and hence do not meet the requirements of Act No. 833, supra; consequently they are ineligible for the insurance under said Act No. 833.

(b) Supernumerary Court Reporters who receive their entire compensation from the State of Alabama are eligible for the insurance mentioned in 3 (a) above.

4. "Per diem" workers for the State do not meet the reqirement of Act No. 833, supra, providing that an employee receive his "full compensation on a monthly basis"; hence they are ineligible for the insurance provided for by said Act No. 833.

5. Employees of the State of Alabama paid on an "hourly basis" are not eligible for the insurance authorized by Act No. 833, supra, inasmuch as they do not meet the requirement of said Act that employees be paid on a "monthly basis."

6. The employees of State agencies who do not receive their pay by check drawn on the State Treasury would be ineligible for the insurance authorized by Act No. 833, supra.

7. An employee on educational leave and receiving only part of his salary from the State of Alabama is ineligible for the insurance provided for by Act No. 833, supra.

Opinion by Assistant Attorney General Bradley.

Dear Mrs. Hitchcock:

Your request for my opinion bearing date of June 3, 1966, is as follows:

"With reference to Act No. 833, 1965 Regular Session, the State Employees' Insurance Board requests clarification of the status of the following State Employees immediately.

"1. Most Circuit Judges receive Supplementary Salary Payments from Counties. Under the above mentioned Act, to be eligible, the employee must receive his **full** compensation from the State of Alabama. Some of these Supplementary Payments are designated as Expense Items. The question arises as to whether or not these individuals will be covered at all, based on our interpretation of the 'Boutwell Amendment.' If they are precluded for the above reasons to free Insurance provided by the State, could they legally enroll their dependents?

"2. District Attorneys would fall in this same category, and clarification of their status is requested.

"3. Court Reporters receive $3800 annually from the State, and a smaller amount from the Counties which they represent. Are they eligible for coverage? Are Supernumeraries in any of the above categories eligible for coverage?

"4. Many long-time Employees of the Legislature are full-time, paid by State Warrant, yet work on a per diem basis. Their salaries, however, are paid to them on the 15th and last day of each month, as are all State Employees. Would the provision which requires full compensation on a monthly basis eliminate these employees from coverage?

"5. The State has many employees who are paid on an hourly basis. These individuals receive their compensation on the 15th and last day of each month, as all other State employees. Would the provision of the law which requires full compensation on a monthly basis preclude these employees?

"6. There are **some** State Agencies whose funds are deposited in local Banks, and checks are drawn upon these funds by these Boards. It would appear that even though these employees are paid on a monthly basis, and are full-time State employees, that

the provision which requires salary payment on a State Warrant would preclude their coverage. Your advice on this matter is requested.

"7. Will employees who are on authorized Educational Leave and who still receive a portion of their monthly salary be eligible for coverage?

"Since time is of the essence in the implementation of this Act, we respectfully request an immediate ruling."

Act No. 833, General Acts of Alabama 1965, p. 1564, provides, in pertinent part, as follows:

"Section 1. For the purposes of this Act an employee is defined as a person who works full time for the State of Alabama, or for a County Health Department, and who receives his full compensation on a monthly basis through means of a state warrant drawn upon the State Treasury or by check drawn upon the State Treasury or by check drawn by the Treasurer of the Alabama State Docks' Department, other than those employees covered by the United States Railway Retirement Act. * * * "

It is a generally accepted rule of statutory construction that where a statute is clear and unambiguous, and its meaning clearly ascertainable, no interpretation will be made by the courts. A careful reading of Section 1 of Act No. 833, supra, leaves me with the impression that the wording of this section is clear and unambiguous and needs no interpretation.

1. A Circuit Judge of the State of Alabama is a State officer and receives an annual salary from the State in the amount of $12,000. Act No. 583, General Acts of Alabama 1963, p. 1277. It is my opinion that he works full time for the State, receives his pay from the State on a monthly basis and on a warrant from the State Comptroller drawn on the State Treasury. However, there are many Circuit Judges in the State of Alabama who receive, by a general Act of the Legislature, part of their compensation from the general funds of the counties comprising their judicial circuit. Act No. 255, General Acts of Alabama 1965, p. 367, is, in pertinent part, as follows:

" 'Section 1. The salary of each judge of the circuit court in circuits composed of one county having a population of not less than 110,000 nor more than 160,000, according to the most recent federal decennial census, shall be supplemented by the county. The amount of the county supplement shall be such sum, payable monthly from the county treasury, as may be required to provide each judge an annual salary of $16,500, payable by the State and county.' "

This Act is typical of those general Acts providing for the compensation of certain Circuit Judges to be paid by the State and counties comprising the Circuit of said Judge. These Circuit Judges would not meet that requirement of Act No. 833, supra, wherein it is provided that an

"employee" receive his "full compensation" from the State of Alabama. Hence, these Circuit Judges would not be eligible for the insurance under Act No. 833, supra.

But, the Circuit Judges who receive their full and entire compensation from the State of Alabama with no part of their compensation contributed by the counties of their judicial circuit, would be eligible for the insurance under Act No. 833, supra, at the beginning of their new term commencing after July 1, 1966, the effective date of the insurance program authorized by said Act No. 833. This delay is necessary in view of the Constitutional prohibition against increasing or decreasing the compensation of an officer during the term of his office. Section 281, Constitution of Alabama 1901, and Amendment 93 thereof, and **Opinion of the Justices,** 249 Ala. 88, 30 So. 2d 14.

The supplementary payments made to certain Circuit Judges in the State entitled expense supplements, would not be supplementary compensation so as to bring such a Judge within the definition limitation of Act No. 833, supra, requiring that an employee receive his entire compensation from the State, nor would it have the effect of increasing or decreasing the salary of the Judge during his term of office, in violation of the Constitutional provision heretofore mentioned. See Vol. 81, Quarterly Report of the Attorney General, p. 43-49.

2. The District Attorneys are in the same category as the Circuit Judges and my answer to your first question would be my answer to your second question.

3. Act No. 518, General Acts of Alabama 1963, p. 1106, provides, in pertinent part, as follows:

" 'Section 1. The Official Court Reporters appointed and holding office under the provisions of law shall receive a salary of six thousand dollars per annum, twenty-two hundred dollars of which shall be payable in monthly installments by the counties composing the circuits, each county to pay its pro rata part thereof, upon the basis of the assessed tax valuation of all property in such county for the preceding year, such payments to be made on certificate issued by the judge of the court in favor of such Official Reporter for the respective amounts due by the several counties each month, the same to be paid by the treasurer of each county out of the general fund on presentation in the same manner as jurors' certificates are now paid, and the remaining thirty-eight hundred dollars per annum shall be paid in equal installments on the warrant of the State Comptroller from the general fund in the state treasury.'

"Section 2. It is expressly provided that this act shall not repeal or amend any local law, special law, general law or general law of local application providing extra allowances, compensation or expenses to any Court Reporter paid from the funds of any county or counties; it being the purpose of this act to increase the compensation paid by the

State from $2600.00 per annum to $3800.00 per annum and that this increase shall be in addition to the amount provided for in Section 1, to be paid by the counties and in addition to any further amounts paid by individual counties. However, the foregoing sentence shall not apply in reference to the Court Reporters of any judicial circuit composed of only one county having a population of not less than 50,000 nor more than 60,000 according to the most recent federal decennial census; in such circuits the total compensation to be paid to any Court Reporter shall not exceed $6,000.00 per annum from both state and county funds."

In view of the provisions of Act No. 518, supra, it is my opinion that official court reporters provided for by Article 8 of Chapter 4, Title 13, Code of Alabama 1940, as Recompiled 1958, would not meet the definition of "employee" as provided in Act No. 833, supra, wherein it provides that an employee's "full compensation" must come from the State of Alabama, and, consequently they would not be eligible for the new State insurance provided for by said Act No. 833, supra.

Act No. 817, General Acts of Alabama 1961, p. 1204, provides that a supernumerary court reporter receives his entire compensation from the State of Alabama. This would satisfy the requirement that such "employee" receive his full compensation from the State of Alabama; however, should such supernumerary court reporter's salary be supplemented by a contribution of any county comprising his circuit, said supernumerary court reporter would not be eligible for the insurance provided for under Act No. 833, supra. Such supernumerary court reporter also meets the other requirements of the statutory definition of an "employee" as provided in Act No. 833, supra.

A court reporter serves at the pleasure of the Circuit Judge appointing him and, therefore, does not have a fixed term so as to bring such office or position within the Constitutional prohibition of increasing or decreasing the compensation of such officer during his term of office. Section 281, Constitution of Alabama 1901, and Amendment 93 thereof.

4. The answer to your fourth question is in the affirmative. The pertinent provision of Section 1 of Act No. 833, supra, here concerned is "full compensation on a monthly basis." The employees referred to in your fourth question are "per diem" workers, or workers by the day, or paid by the day. The statute in question requires compensation on a monthly basis, and, therefore, this group of employees would not be eligible for the insurance authorized by Act No. 833, supra.

5. The answer to your fifth question is in the affirmative. The workers referred to by you in your fifth question are "hourly workers" or, in other words, paid on an hourly basis. This does not comport with the requirement that employees are to be paid on a monthly basis. Hence, they would not be eligible for the insurance provided for by Act No. 833, supra.

6. The answer to your sixth question is in the affirmative.

Act No. 833, supra, requires an employee to be paid by a State warrant or State check drawn upon the State Treasurer or by check drawn by the Treasurer of the Alabama State Docks Department.

Those employees of the State agencies mentioned in your sixth question would not meet the requirements of Act No. 833, supra, above set out; hence, they would not be eligible for the State insurance hitherto provided for.

7. The answer to your seventh question is in the negative.

Act No. 833, supra, requires, in part, that an "employee" work full time and that he receive his full compensation on a monthly basis.

The employees referred to in your seventh question do not "work full time" for the State nor do they receive their "full compensation" from the State; therefore they do not meet the definition requirements of Act No. 833, supra, and would not be entitled to the insurance authorized by said Act No. 833.

Very truly yours,

RICHMOND M. FLOWERS
Attorney General

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